

Dkt. 54203-H-PCT/JPW/SHS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Peter D. Kwong et al.

Serial No. : 09/856,200
(U.S. National Stage of PCT/US98/23905,
filed 10 November 1998)

Filed : Not Yet Accorded Filing Date

For : CRYSTAL COMPRISING HUMAN IMMUNODEFICIENCY
VIRUS ENVELOPE GLYCOPROTEIN gp120, COMPOUNDS
INHIBITING CD4-gp120 INTERACTION, COMPOUNDS
INHIBITING CHEMOKINE RECEPTOR-gp120
INTERACTION, MIMICS OF CD4 AND gp120 VARIANTS

1185 Avenue of the Americas
New York, New York 10036

Assistant Commissioner for Patents
Washington, D.C. 20231

**SECOND DECLARATION OF OFRA WEINBERGER PH.D. IN
SUPPORT OF PETITION TO REVIVE UNINTENTIONALLY
ABANDONED APPLICATION UNDER 37 C.F.R. §1.137(b)**

I, Ofra Weinberger, Ph.D. hereby declare that:

1. At all relevant times, I have been either an Associate Director or Director of the Health Sciences Division, Columbia Innovation Enterprise ("CIE") located at Columbia University in the City of New York, the coassignee (as The Trustees of Columbia University in the City of New York) of the above-identified PCT application together with Dana-Farber Cancer Institute, Boston, Massachusetts. CIE is an office of Columbia University which is the liaison with outside patent counsel.
2. At all relevant times, I had responsibility for instructing outside patent counsel at Cooper & Dunham LLP, including John P. White, regarding PCT International Application No. PCT/US98/23905 ("the PCT application").

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3. This Second Declaration is submitted in support of a Petition to Revive an Unintentionally Abandoned Application under 37 C.F.R. §1.137(b) in connection with the PCT Application. The deadline for entering the PCT Application into the United States national stage was May 10, 2000, i.e. thirty (30) months from the United States priority date.
4. Mr. White sent letters to me on March 10, 2000 and April 10, 2000 (copies of which are attached as Exhibits 1-2, respectively) reminding me about the deadline for entering the subject PCT application into the national or regional stage. These letters state that the deadlines for national and/or regional stage entry are May 10, 2000 or June 9, 2000, and provide the deadlines for particular countries. However, the letters mention the United States only in the middle of a long paragraph listing more than 75 countries and regions. I failed to see the mention of the United States and consequently, I mistakenly thought that the list of countries included only foreign countries.
5. On May 5, 2000, Joshua Landa, a legal assistant of Mr. White, telephoned me to obtain instructions concerning the designated countries, if any, in which the PCT application was to enter the national or regional stage. Although it was always my intention that the subject PCT Application enter the national stage in the United States, I mistakenly instructed Mr. Landa that Columbia did not wish that the subject PCT Application enter the national or regional stage because I thought that this instruction applied only to the foreign countries, i.e.

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countries other than the United States. I intended my instructions to apply only to the designated "foreign" countries, not to the United States. I did not intend for my instructions to mean that the application should not enter the national stage in the United States.

6. Due to my unintentional oversight, applicants failed to enter the national stage in the United States by the May 10, 2000 deadline.
7. Mr. White confirmed his understanding of my instructions in a letter dated May 9, 2000, a copy of which is attached as Exhibit 3. Due to my unintentional oversight, I believed that Mr. White's letter confirming my instructions not to enter the national or regional stage applied only to the designated "foreign" countries, and I failed to notice that the United States was listed together with the designated "foreign" countries.
8. On or about May 22, 2000, I reviewed Mr. White's May 9, 2000 letter and became aware that the letter confirmed that the subject application would not enter the national or regional stage and therefore, that the subject PCT Application had not in fact entered the national stage in the United States.
9. On May 22, 2000, I contacted Elizabeth Wieckowski, an associate of Mr. White, by telephone to confirm my understanding of the May 9, 2000 letter. I advised Ms. Wieckowski that I had always intended that the subject application enter the national stage in the United States and requested that whatever action was necessary be taken

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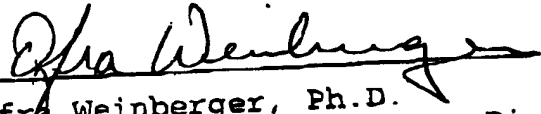
so that the PCT Application would enter the national stage in the United States.

10. In May 23, 2000 letter (a copy of which is attached as Exhibit 4) I transmitted to Mr. White instructions to proceed with reviving the unintentionally abandoned national stage of the PCT Application in the United States.

11. The entire delay in filing the U.S. national stage transmittal papers, including the period from May 9, 2000 until the filing of a grantable petition pursuant to 37 C.F.R. §1.137(b), was unintentional.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under § 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date: 11/2/01


Ofra Weinberger, Ph.D.
Director, Health Sciences Division
Columbia Innovation Enterprise